IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.W.P. No: 1254 of 2006

Date of decision: 27.12.2006

Duni Chand Dhiman **Petitioner**

Versus

State of H.P. and another **Respondents.**

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The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr.Surinder Singh, Judge.

Whether approved for reporting?[1]

For the Petitioner: **Mr.Bipin Negi, Advocate**

For the Respondent: **Mr.M.S.Chandel, Advocate General with Mr. R.M.Bisht, Deputy Advocate General.**

Per Deepak Gupta, J.

The petitioner has been elected as Pradhan of Gram Panchayat, Jabli. This is his third turm as Pradhan of the said Gram Panchayat. By means of this writ petition, the petitioner has challenged the order dated 6.9.2006 passed by the Deputy Commissioner, Solan (respondent No.2) whereby he has ordered the suspension of the petitioner as Pradhan of Gram Panchayat,

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

Jabli. Earlier also, the petitioner was placed under suspension vide order dated 17th February, 2006. This order was challenged by the petitioner by filing CWP No. 244 of 2006. This petition was allowed on 17.5.2006 and the suspension order passed against the petitioner was quashed and set aside with all consequences.

Surprisingly, though the order passed by respondent No. 2 was quashed by this court on 17.5.2006 till 9.6.2006, the respondent No. 2 did not take any steps to reinstate the petitioner. This was despite the fact that the petitioner had moved an application to the Deputy Commissioner alongwith certified copy of the judgment on 26.5.2006 itself. This order had been passed in the presence of learned Advocate General and the Deputy Commissioner was supposed to comply with the order forthwith. The Deputy Commissioner passed an order on 9.6.2006 which reads as follows:-

> "In view o the orders passed on 17.5.2006 by the Hon'ble High Court, Shimla in the matter of CWP No. 244 of 2006, the

suspension order served upon Sh. Duni Chand Pradhan of Gram Panchayat Jabli, vide office order No. SLN(Panch)2006-Jabli-253-57 on dated 17.2.2006, are hereby revoked with immediate effect."

A perusal of this order shows total non application of mind on the part of the Deputy Commissioner, Solan. Once the order of suspension had been quashed by this court, where was the need to revoke it with immediate effect from 9.6.2006 by the Deputy Commissioner. An order which is quashed by this court is no order in the eyes of law and could not have been revoked. The order dated 17.2.2006 had been quashed by this court on 26.5.2006. There was no question of revoking the order which no longer existed in the eyes of law, on 9.6.2006.

Thereafter the Deputy Commissioner, Solan, issued a fresh show cause notice to the petitioner on 3rd August, 2006. The petitioner was directed to file his reply within a period of 15 days. Admittedly, the petitioner filed the reply. According to the reply filed by respondents No. 1

& 2 on the affidavit of respondent No. 2, the show cause notice was served upon the petitioner on 8.8.2006. It is also admitted that the reply to the show cause notice was filed by the petitioner in the office of the Deputy Commissioner on 14.8.2006. The respondents have, however, taken a very untenable and ludicrous stand that the petitioner did not present the reply in person to the Deputy Commissioner. There is no law which requires that the reply should have been filed personally with the Deputy Commissioner. The reply was filed in the office of the Deputy Commissioner within the prescribed period and despite this reply, admittedly having been filed on 14.8.2006, the respondent No. 2 passed the impugned order of suspension on 6.9.2006 in which it is stated that no reply has been filed. The stand taken that the reply was filed in the office and was dealt in a routine manner and could not be placed in the man file with the Deputy Commissioner is an unreasonable and ridiculous stand. Even if it is accepted to be correct, then

also why should the petitioner suffer for the total negligence and lethargy in the functioning of the office of respondent No. 2. If the respondent No. 2 cannot manage the affairs of his office in a proper manner, he cannot transfer the blame to the petitioner. It is indeed surprising that in a matter in which previously also the court had set aside the order of respondent No.2, the said respondent approached the whole matter in a very casual manner. We are constrained to observe that the manner in which the respondent No. 2 has acted, is not at all in consonance with the style of functioning expected from officers holding such high posts.

The impugned order dated 6.9.2006 issued by the respondent No. 2 cannot be sustained since it has not at all taken into consideration the reply filed by the petitioner. Accordingly, the said order is set aside. We have purposely not gone into the other questions raised by Mr.B.C.Negi, learned counsel for the petitioner, since we do not want to comment on the merits of

the case. However, while setting aside the impugned order, we direct that the respondent No. 2 may pass appropriate order after considering the reply of the petitioner. In view of the peculiar facts and circumstances of the case, we also direct that the respondent No. 2 shall fix a date for hearing and give personal hearing to the petitioner before passing any orders.

The writ petition is allowed in the aforesaid terms. In view of the fact that we have held that the respondent No. 2 has been absolutely casual and negligent in dealing with the matter, we impose costs of Rs.5,000/- to be deposited by respondent No. 2 with the Advocates' Welfare Fund (Trust Committee) of Bar Council of Himachal Pradesh.

(Deepak Gupta),J.

December 27, 2006(K) (Surinder Singh),J.